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10/676,980	10/01/2003	Fred D. Oberhaus	7349	7684
7590	05/11/2010		EXAMINER	
Paul M. Denk Ste. 170 763 S. New Ballas Road St. Louis, MO 63141			PUROL, SARAH L	
			ART UNIT	PAPER NUMBER
			3637	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/676,980
Filing Date: October 01, 2003
Appellant(s): OBERHAUS, FRED D.

Paul M. Denk
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 25th, 2010 appealing from the Office action mailed June 4, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

NEW GROUND(S) OF REJECTION

Claims 4-14 are additionally rejected under 102(b) as anticipated by Jurasek 3,680,712.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,680,712	Jurasek, Stanley J.	08-1972
6,286,691	Oberhaus et al.	09-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 4-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jurasek '712 in view of Oberhaus et al. 6286691.

Jurasek teaches a free standing wire rack having end frames 23,24 and further having cross rods arranged horizontally thereon. Also shown is shelving 26,27. Vertical rods are shown and braces 31,32. The connecting sleeve is the ends of the vertical uprights.

Oberhaus teaches pressure fitting between the rack components. Col. 5 line 65-Col.6 line 15.

Specifically one side of the shelving will be installed at a juncture between the vertical support rod 16 and one of its affixed transverse support rods 18, and the shelf will be tilted, during its installation, and at such time, the other side of the shelf will then be forced downwardly, into a horizontal position, into the juncture between the opposite support rod 17, and the corresponding transverse rod 18, and under a biasing force pressured into its usable configuration, as shown in FIG. 12. Hence, once a shelf is installed, within its end frame, it will be snugly and pressure fitted therein, to add to the stability of the assembled shelving, for ready usage. And, due to the pressure fit of a shelf within its respective end frames, the shelving, once assembled, is fully integrated,

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and does not rattle or cannot be shaken loose, during usage, due to this pressure fit type of engagement of its various components when the shelving is assembled for installation.

To connect the rack components of Jurasek by pressure fitting as taught by Oberhaus for the purpose of an easy yet secure fitting would have been obvious for one having ordinary skill in the art at the time of the invention.

NEW GROUND(S) OF REJECTION

Claims 4-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Jurasek 3680712.

Jurasek teaches a free standing wire rack having end frames 23,24 and further having cross rods arranged horizontally thereon. Also shown is shelving 26,27 pressure biased against the horizontal cross rods.

Column 8, lines 36-66.

To assemble the uppermost rack section 12, the side frames 16 and 17 are first disposed in vertical, opposed, facing relationship, whereupon the shelves 18 or 19 are then mounted on the side frames 16 and 17 for fixedly and rigidly interconnecting same. Particularly, the legs 61 and 62 of the shelf 18 will be positioned above and outwardly of the intermediate support rods 38A and 38B, the shelf 18 being positioned so that the legs extend substantially vertically downwardly until the bent portions 66 of the legs, particularly the chamfered faces 67 thereof, contact the locking rods 41 and 42. Continued downward pressure exerted on the shelf 18 will cause the legs 61 and 62 to resiliently deflect inwardly so as to permit the bent portions 66 of the legs to pass by the locking rods, whereupon the bent portions 66 will then

resiliently snap outwardly so as to be positioned partially under the locking rods (as illustrated in FIG. 7) for resiliently holding the shelf tightly in engagement with the side frames 16 and 17. When so positioned, the weight of the shelf 18 is supported on the intermediate support rods 38A and 38B, whereas the bent portions 66 of the legs cooperate with the locking rods 41 and 42 for tightly and fixedly maintaining the shelf interconnected between the side frames. The shelves are disassembled in the reverse manner merely by exerting a sufficient upward force on the shelf so as to cause the legs to resiliently deflect inwardly to enable the bent portions 66 of the legs to move upwardly past their corresponding locking rods.

Vertical rods are shown and braces 31,32. The connecting sleeve is the ends of the vertical uprights.

(10) Response to Argument

Appellants submit that claims 4-14 are not obvious based on Jurasek '712 in view of Oberhaus, et al. '691, because:

On page 8 of the argument, line 16 "*as explained in claim 4, each of the shelvings has a pair of end rods 16 and 17, that embrace the vertical rods 6 and 7 of the contiguous end frame, that adds further stability to the structured assembly*"

Which appellant argues is not shown in either Jurasek '712 nor Oberhaus '691.

Appellant's argument is without merit in that the limitation of "embracement" is never claimed. Appellant is arguing a limitation which is not recited and therefore cannot be held to be persuasive.

It is the position of the examiner that the limitations which are recited have been rendered obvious over the combination of Jurasek '712 in view of Oberhaus '691.

Appellant further argues that claims 4-14 are not obvious based on Jurasek '712 in view of Oberhaus et al. '691, because:

On page 8 of the argument last paragraph “*A claim such as claim 14, and its dependent claim 4, identifies further structural definition that there is a forced pressure fit between the shelving, and the vertical rods, and through contact with each other, and the embracement of the vertical rods 6 and 7 by the shelving rods 16 and 17, at each end of the rack, as a forced pressure fitting between these components*”

Again, appellant’s argument is without merit in that there is no recitation of “forced pressure fit” or “embracement” in the claims. Furthermore no alleged further structural definition is positively identified in the claims. Furthermore; it is submitted that the limitations that are recited have been met by Jurasek '712, alone and in view of Oberhaus et al. as recited in the above rejections, the wording of which was taken directly from the body of the patents as indicated.

It is submitted by the examiner, that to argue limitations which are not claimed is not persuasive. Furthermore, it is the position of the examiner, that to argue the invention generally without pointing to specific claim language is also not persuasive.

(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.
This examiner’s answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer

exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Sarah Purol/

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Primary Examiner,
Art Unit 3637

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Katherine Matecki/
Director, Technology Center 3600

Conferees:

Ko-Hung Chan
/K.C./
Primary Examiner, Art Unit 3634
Heather Shackelford /hcs/